

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

F.A.O. No.5374 of 2006
Date of Decision: 8.12.2006

New India Assurance Co. Ltd.

..... Appellant

Versus

Ram Kali and others.

..... Respondents

CORAM: Hon'ble Mr.Justice Uma Nath Singh
Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Paul S.Saini, Advocate for the appellant.

....

UMA NATH SINGH, J

This F.A.O. arises out of an award dated 25.9.2006 passed by the Presiding Officer, Motor Accident Claims Tribunal, Panchkula in M.A.C.T. Case No.8 of 2006 awarding a sum of Rs.3,17,200/- with 7.5% interest per annum in a death case of Sipahi Lal alias Pyare Lal, aged 40 years, in a vehicular accident.

Learned counsel for the appellant- Insurance Company challenged the award on two counts, namely, (i) that the deceased was not holding a valid driving licence and, therefore, there was a breach of conditions of insurance policy; and (ii) that the vehicle was being plied in violation of the conditions of the route permit.

We have carefully considered the submissions and also perused the award. It appears that the appellant-Insurance Company has not properly discharged the onus to prove that the driver of the vehicle was not holding a valid driving licence, in-as-much as, a competent official of the concerned Transport Authority could not be examined in time. Thus, the Tribunal had no option but to close the evidence of the Insurance Company. Besides, the said order was not challenged in revision and hence, it attained finality. Moreover, it appears from the findings of the Tribunal that the owner of the offending vehicle had taken due diligence and proper care by hiring experts, who had taken driving test of the driver before taking him in his employment as a driver. Thus, the owner has performed his duties and discharged the onus in terms of the ratio of the judgment of the Apex Court reported as (2006) 7 S.C.C. 318- (Lal Chand Versus Oriental Insurance Co.Ltd.). Hence, the first limb of the arguments does not find favour with the Court.

As regards the second contention in respect of the holding of requisite permit to ply on the road where the accident took place, vide Exhibit P4 it has been found that the vehicle was having necessary permit to ply within the territorial area of Chandigarh. Though the accident took place in a satellite town of Chandigarh, being Panchkula within the territorial jurisdiction of Haryana, but since the vehicle was having necessary transport permit in terms of Section 2(31) of the Motor Vehicles Act, 1988, the second submission of the learned counsel is also not tenable. The route permit is only a condition of permit granted by the Transport Department for plying a vehicle. Moreover, only because the accident took place in the satellite town of Panchkula, it cannot be said that had the vehicle been plied

within the territorial area of Chandigarh, the accident would not have taken place. The traffic load in Chandigarh is rather heavier than that in Panchkula. Under these circumstances, we are not inclined to interfere with the impugned award. Hence, it is hereby affirmed.

Resultantly, the F.A.O. is dismissed in limine.

(Uma Nath Singh)
Judge

December 08,2006
“SCM

(Mahesh Grover)
Judge